

STATE OF MICHIGAN  
COURT OF APPEALS

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DANSE CORP,

Petitioner-Appellant,

v

CITY OF MADISON HEIGHTS,

Respondant-Appellee.

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UNPUBLISHED

July 27, 2004

No. 244723

Tax Tribunal

LC No. 00-230939

Before: Judges Sawyer, P.J., Gage and Owens, JJ.

PER CURIAM.

Petitioner appeals as of right the Michigan Tax Tribunal's order on remand concerning an appeal of respondent's assessment of property taxes against tools petitioner claimed were exempt as "special tools." The Michigan Supreme Court had remanded with specific instructions to determine whether utility and amortization ceased when a product was discontinued. We reverse.

The tribunal found that the tools' utility would not cease if petitioner discontinued production and sold the tools to another manufacturer. Petitioner argues that this was error because utility and amortization refer to a tool's economic life rather than its physical life, and economic life relates solely to the taxpayer. We agree that the tribunal erred but on different grounds.

Statutory interpretation is a question of law that is reviewed de novo. *Danse Corp v City of Madison Heights*, 466 Mich 175, 178, 644 NW2d 721 (2002). "[I]n the absence of fraud, review of a Tax Tribunal decision is 'limited to determining whether the tribunal erred in applying the law or adopted a wrong principle[.]' '[F]actual findings are conclusive if supported by competent, material, and substantial evidence on the whole record.'" *Id.*, quoting *Michigan Bell Telephone Co v Treasury Dep't*, 445 Mich 470, 476; 518 NW2d 808 (1994). The agency's factual findings are given deference. *Steger v Dep't of Treasury*, 252 Mich App 183, 188; 651 NW2d 164 (2002). Tax exemptions are generally disfavored and strictly construed against the taxpayer. *Town & Country Dodge v Dep't of Treasury*, 420 Mich 226, 242-243; 362 NW2d 618 (1984).

MCL 211.1 provides that all real and personal property is subject to taxation unless expressly exempt. MCL 211.9b<sup>1</sup> provides an exemption for special tools:

(1) All special tools are exempt from taxation.

(2) As used in this section, “special tools” means those manufacturing requisites, such as dies, jigs, fixtures, molds, patterns, gauges, or other tools, as defined by the state tax commission, that are held for use and not for sale in the ordinary course of business.

(3) Special tools are not exempt from taxation if the value of the special tools is included in the valuation of inventory produced for sale.

Before a tool can be tax exempt, it must meet the state tax commission’s definition of a special tool. *Danse Corp, supra* at 181. The state tax commission has defined special tools as follows:

“Special tools,” as used in section 9b of the act, means those finished or unfinished devices, such as dies, jigs, fixtures, molds, patterns, and special gauges, used or being prepared for use in the manufacturing function for which they are designed or acquired or made for the production of products or models and are of such specialized nature that their utility and amortization cease with the discontinuance of such products or models. [1999 AC, R 209.21 (Rule 21).]

Although an Assessor’s Manual, which provided guidance with respect to preparing tax assessments, listed seven additional guidelines regarding what constituted a special tool, guidelines not promulgated under the Administrative Procedures Act do not have the force of law. *Danse Corp, supra* at 176-177, 179 n 5. The Michigan Supreme Court has stated that a tool must meet two requirements under Rule 21 to be tax exempt: (a) it “must be ‘used’ or ‘being prepared for use’ in a manufacturing function,” and (b) it “must be of ‘such a specialized nature that [its] utility and amortization cease with the discontinuance of such products or models.’” *Danse Corp, supra* at 184.

To determine whether the tribunal determined utility and amortization from an incorrect perspective, general principles of statutory interpretation must be applied. The primary goal of statutory interpretation is to effectuate legislative intent. *Ross v State*, 255 Mich App 51, 55; 662 NW2d 36, 1v den 469 Mich 853 (2003). “The Legislature is presumed to have intended the meaning it plainly expressed.” *Id.*, citing *Guardian Photo, Inc v Dep’t of Treasury*, 243 Mich

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<sup>1</sup> MCL 211.9b was amended by 2004 PA 4 (Appendix E), to read in relevant part as follows:

(3)(b) “Special tool” means a finished or unfinished device such as a die, jig, fixture, mold, pattern, special gauge, or similar device, that is used, or is being prepared for use, to manufacture a product and that cannot be used to manufacture another product without substantial modification of the device. The length of the economic life of the product manufactured shall not be considered in making a determination whether a device used to manufacture that product is a special tool.

App 270, 276-277; 621 NW2d 233 (2000). The instant tax exemption covers *all special tools* as defined by the state tax commission. MCL 211.9b. Although clearly the taxpayer that owns a special tool is entitled to the tax exemption, there is nothing in the plain language of MCL 211.9b stating that the tool's status as an exempt tool depends on ownership by a particular taxpayer. Contrast, for example, MCL 211.9, which exempts personal property belonging to "charitable, educational, and scientific institutions . . ." Moreover, because the definition by the state tax commission does not contain a reference to a particular taxpayer, the exemption is not dependent on the particular taxpayer's ownership. Therefore, petitioner's argument fails.

Great weight is given to an agency's construction of a statute that the agency is required to enforce. *In re D'Amico Estate*, 435 Mich 551, 559; 460 NW2d 198 (1990). Therefore, the tribunal's interpretation is generally given deference. However, this Court will not give a "strained construction that is adverse to legislative intent." *Milk Producers v Dep't of Treasury*, 242 Mich App 486, 493; 618 NW2d 917 (2000), citing *Canterbury Health Care, Inc v Dep't of Treasury*, 220 Mich App 23, 31; 558 NW2d 444 (1996). A tax exemption should be neither expanded nor contracted. *Michigan Bell v Dep't of Treasury*, 229 Mich App 200, 209; 581 NW2d 770 (1998).

The tribunal found that the tools were not exempt because they could have continued use after *petitioner* ceased producing the products. Nothing in the plain language of MCL 211.9b or Rule 21 indicates that utility and amortization must cease with the discontinuance *by a particular taxpayer* of a product. Rule 21 merely requires that the utility and amortization cease when the product is discontinued, or, in other words, is no longer produced.<sup>2</sup> Because the rule and statute contain no restrictive language, this would indicate that the tools would be exempt if their utility and amortization ceased *when the product is no longer produced by anyone*. By requiring cessation of utility and amortization when petitioner discontinued the product, the tribunal improperly contracted the scope of the exemption. *Michigan Bell, supra* at 209. Moreover, the record clearly indicates that the tools could not be modified without incurring great cost. Because the Legislature intended to provide an exemption for tools that no longer had utility and amortization once they were no longer used to make the product for which they were designed, the tribunal erroneously applied the law when it required utility and amortization to cease when petitioner's production ceased. *Danse Corp, supra* at 178.

Petitioner next argues that the tribunal erred by not reading utility and amortization together and claims that amortization should modify utility. We disagree.

When construing a statute, courts must apply the plain and unambiguous meaning of a statute as written. *Danse, Corp, supra* at 182. "The court must presume that every word has some meaning and, if possible, effect should be given to each provision." *Id.*, citing *People v*

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<sup>2</sup> When a word is not defined by statute, a dictionary may be consulted to determine its ordinary meaning. *Title Office, Inc v Van Buren Co Treasurer*, 469 Mich 516, 522; 676 NW2d 207 (2004). Discontinuance is defined as "the act of discontinuing or the state of being discontinued." *Id.* Discontinue is defined as "1. to put an end to; stop; terminate. 2. to cease using, producing, subscribing to, etc." *Random House Webster's College Dictionary* (2001).

*Borchard-Ruhland*, 460 Mich 278, 285; 597 NW2d 1 (1999). A court’s interpretation should not render language meaningless. *Nat’l Center for Manufacturing Sciences, Inc. v City of Ann Arbor*, 221 Mich App 541, 548; 563 NW2d 65 (1997). Rule 21 defines a special tool as one that is so specialized that its “utility *and* amortization cease with the discontinuance” of the product. Rule 209.21.

“And” is a conjunctive term. See generally, *Auto-Owners Ins v Stenberg Bros, Inc*, 227 Mich App 45, 50-51; 575 NW2d 79 (1997). This indicates that both the tool’s utility and the tool’s amortization must cease. Petitioner has not cited any authority to support its argument that amortization modifies utility. If the Legislature had intended amortization to modify utility, it could easily have done so by requiring “amortized utility” or “utility’s amortization” to cease with the discontinuance of the product. Provisions not included by the Legislature should not be included by the courts, *In re Wayne County Prosecutor*, 232 Mich App 482, 486; 591 NW2d 359 (1998). Moreover, because use of the word “and” indicates that both conditions – cessation of utility and cessation of amortization – must be met, it would be proper to deny tax-exempt status if one of the conditions was not met.

Petitioner next argues that the tribunal erred by failing to address the tools’ specialized nature. In essence, petitioner’s argument is that the specialized nature of special tools makes their utility and amortization cease, so the tribunal’s failure to address the specialized nature was error. We agree.

The Supreme Court’s order of remand instructed the tribunal to reconsider petitioner’s tax-exempt status in light of the Supreme Court’s opinion in *Danse*. *Danse Corp, supra* at 185. The court opined that one of the requirements for tools to attain tax-exempt status was that they be of “such a specialized nature that their utility and amortization<sup>3</sup> cease with the discontinuance of such products or models.” *Id.* at 184, quoting R 209.21. In its opinion on remand, the tribunal stated that the issue was whether the tools’ “utility and amortization cease with the discontinuance of such products or models.”

Administrative rules are construed according to general principles of statutory construction. *Danse Corp, supra* at 181-182. As previously indicated, courts must apply the plain and unambiguous meaning of a statute as written, should give effect to each provision, and should not render language meaningless. *Danse, Corp, supra* at 182 (citations omitted). In the instant case, the word that determines whether petitioner’s construction of Rule 21 is correct is

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<sup>3</sup> When a word is not defined by statute, a dictionary may be consulted to determine its ordinary meaning. *Title Office, Inc, supra*, 469 Mich at 522. Amortization is defined as “an act or instance of amortizing a debt or other obligation.” *Random House Webster’s College Dictionary* (2001). The relevant definition of amortize is “to write off a cost of (an asset) gradually.” *Id.* “Write off” is defined as “a reduction in book value; depreciation.” *Id.* And depreciation is defined as either “a decrease in valued due to wear and tear, decline in price, etc.” or “such a decrease as allowed in computing the value of property for tax purposes” *Id.*

the word “that.” When a word is not defined by statute, a dictionary may be consulted to determine its ordinary meaning. *Title Office, Inc v Van Buren Co Treasurer*, 469 Mich 516, 522; 676 NW2d 207 (2004). The definition of “that” as used in the context of the phrase “‘Special tools’ . . . are of such specialized nature *that* their utility and amortization cease with the discontinuance of such products or models” is as follows:

4. (used as the subject or object of a relative clause, esp. one defining or restricting the antecedent, sometimes replaceable by *who*, *whom*, or *which*): *the horse that he bought*. [*Random House Webster’s College Dictionary* (2001).]

The antecedent in the subject phrase is “nature.” Everything following nature limits or restricts the definition of the antecedent, and is called a restrictive clause. Therefore, it is the specialized nature that makes the tools exempt, and cessation of utility and amortization merely describes the specialized nature. The phrase could be rewritten, without changing the meaning, as: “special tools” . . . are so specialized that their utility and amortization cease with the discontinuance of such products or models.

With respect to “specialized nature,” the applicable definition of specialize is “to be adapted to a special function or environment.” *Random House Webster’s College Dictionary* (2001). And special is defined as “of a distinct or particular kind or character.” *Id.* This would indicate that before a tool is considered exempt, it must be uniquely adapted. Testimony showed the tools were unique to the products they were designed to produce and could not be easily modified to produce a different part. The tribunal stated in its opinion on remand, “[neither] Respondent, the Tribunal nor the Court of Appeals argues with the fact that the subject molds and the mold specific heat staker are product-specific . . . .” Therefore, the Tribunal recognized the unique or specialized nature of the tools.

Because Rule 21 is properly construed as petitioner argues – the specialized nature is what makes the utility and amortization cease – and the tribunal found that the tools were specialized, the tribunal was necessarily required to find that utility and amortization ceased when the tools were no longer used to produce the products for which they were designed. By not interpreting Rule 21 according to its commonly understood, grammatically correct meaning, the tribunal adopted the wrong principle of law. *Danse Corp, supra* at 178, citing *Michigan Bell Telephone Co, supra* at 476. Because the tribunal then applied this incorrect principle, it erred in applying the law. *Id.*

Reversed.

/s/ David H. Sawyer

/s/ Hilda R. Gage

/s/ Donald S. Owens